IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

NOTICE OF MOTION NO.3755 OF 2007
IN
SUIT NO.101 OF 2006

Rajdev Shivcharan Maurya & Anr. ...Plaintiffs.

Versus

Municipal Corporation of Greater Mumbai. ...Defendant.

.....

Mr. H. S. S. Murthy with Mr. Piyush Shah for the Plaintiffs.
Mr. S.U. Kamdar with Mr. H.C. Pimple and Mr. R.Y. Sirsikar for Defendant No.1.
Mr. Aditya Chitale for the Applicant.

.....

CORAM : DR. D.Y. CHANDRACHUD, J.

December 17, 2007.

P.C.:

In the Notice of Motion which forms the subject matter of these proceedings, the Plaintiffs seek an injunction restraining the Defendant from interfering with their possession of land admeasuring 1200 sq.mtrs., comprised in CTS 746/11 situated at Goregaon (West), Mumbai and from demolishing the structure situated thereon. A negative declaration has been sought in the suit, to the effect that

the Municipal Corporation does not have title to the land and is estopped from taking any action for demolishing of the structure situated on the property. A permanent injunction has been sought in the suit.

2. The case of the Plaintiffs is that their father, Shivcharan D. Maurya obtained a lease of the land from a person by the name of S.N. Desai who was the owner of the land. The father of the Plaintiffs is stated to have constructed a stable and a structure comprising of several rooms which were let out for commercial and residential purposes. The owner of the land instituted a suit, Regular Civil Suit 446 of 1953, before the Civil Judge, Junior Division, Borivli in which a compromise was arrived at on 31st August 1955. By the decretal terms, the Plaintiff to the said suit admitted that the father of the Plaintiffs herein was in possession of the land as a monthly tenant. According to the Plaintiffs, the Municipal Corporation informed their predecessor in 1975 that the Corporation had acquired title to the land from the original owner. The Plaintiffs' father is stated to have paid ground rent of Rs.600/- against a receipt dated 17th August 1976 for

the period between February 1975 and April 1976. The Plaintiffs' father died on 13th September 1981 after which no rent was paid.

3. A part of the land on which the structure was located, fell within a proposal for road widening. The Plaintiffs submitted a proposal for the shifting of their structure to clear the set back required for road widening. On 28th September 2000, the Ward Officer of the P-South Ward addressed a communication to the Plaintiffs for the shifting of the occupants/tenants housed in the existing stable who were affected by the proposed road widening. The communication provided that the existing structure would be removed completely and would be relocated in a structure admeasuring 1813 sq.mtrs. on the ground floor and 1813 sq.mtrs on the mezzanine floor as indicated in the plan attached thereto. The mode of construction was provided in the letter. Conditions 1 and 2 of the letter were to the following effect :

> "1). You shall formulate an agreement/ settlement with the tenants/occupants that you shall carry out the relocation of the structure/units strictly in accordance with the permission granted by BMC as per the policy of the removal of bottleneck and to rehabilitate all the bonafide tenants/occupants peacefully in the Units proposed to be

> constructed beyond regular line of the two aforesaid roads and their junction of the roads. A copy of the agreement shall be submitted to this office.
>
> 2) Though the land under reference vests with BMC for the development of the municipal Office Building, you shall handover the affected land after removal of the structure (stable) peacefully for the development of Municipal office building without claiming any charges/dispute."

On 28th February 2001, a stop work notice was issued by the Municipal Corporation under Section 354A of the Mumbai Municipal Corporation Act, 1888. The permission that was granted by the Municipal Corporation was revoked on 21st March 2001. The Plaintiffs filed a Writ Petition before this Court under Article 226 of the Constitution. On 7th November 2001, the petition was admitted and ad-interim relief was granted. It appears that in pursuance of the directions of this Court, the Municipal Corporation passed a reasoned order on 2nd June 2001 holding that the land which originally belonged to S.N. Desai had been taken possession of by the Corporation on 17th February 1975 against a possession receipt. The order recorded that a Municipal Office Building was to be constructed on the land and that the Plaintiffs and their tenants would be accommodated on the

ground floor by allotment of commercial space. The Petition was heard and finally disposed of by this Court on 11th April 2005. In an affidavit filed by the Municipal Corporation before this Court on 25th February 2005, it was stated that though initially the Plaintiffs were to be accommodated in a building which was to be constructed on the land, the Municipal Corporation had since decided that the entire building which was to be constructed would be used solely and exclusively for a Municipal Office. The Plaintiffs were offered alternative accommodation in a Municipal Market situated at Liberty Garden, Malad (West). The Municipal Corporation had offered 3660 sq.ft. subject to the payment of 25% of the cost of construction and maintenance charges. The Plaintiffs were not in a position to pay the amounts demanded by the Municipal Corporation. The Municipal Corporation stated before this Court that it would take recourse to due process of law for obtaining possession from the Plaintiffs in accordance with the provisions of the Mumbai Municipal Corporation Act, 1888. The Court directed that in the event the Municipal Corporation did so, all the rights and contentions of the Plaintiffs were kept open.

4. The Municipal Corporation has instituted proceedings under Section 105B of the Mumbai Municipal Corporation Act, 1888 for the eviction of the Plaintiffs. The Enquiry officer has passed an order of eviction on 5th May 2007. The appeal filed by the Plaintiffs was admitted by the Principal Judge of the City Civil Court on 25th June 2007 and an interim stay has been grated. The suit out of which these proceedings arise has been instituted in order to seek a declaration that the Municipal Corporation has no title to the land and that it ought, therefore, to be injuncted from taking any action for the demolition of the structure or for dispossessing the Plaintiffs.

5. The Notice of Motion has by consent been taken up for hearing and final disposal.

6. In the affidavit in reply that has been filed by the Municipal Corporation, the case of the Corporation is that it is the owner of the land comprised in CTS 746/11 of village Pahadi, Goregaon. The Municipal Corporation has stated that the plot of land was taken over

from the original owner, S.N. Desai, on 17th February 1975. The land has been reserved for a Municipal Ward Office in the sanctioned Development Plan of P-South Ward. Alternative accommodation was offered to the Plaintiffs in a Municipal Market at Liberty Garden, Malad (West). Since the Plaintiffs declined to accept the offer, the Municipal Corporation served a notice terminating the tenancy dated 26th August 2005 which was followed by initiation of proceedings under Section 105B of the Act. The Municipal Corporation stated that the original owner surrendered his title and interest in favour of the Municipal Corporation against the grant of additional FSI in lieu of compensation. The property register card thereupon shows the name of the Municipal Corporation as the owner. The Municipal Corporation has stated that the land is required for a public purpose for constructing a new Municipal Ward Office. A work order was issued on 21st August 2007 and construction has commenced from 1st September 2007, by carving out the area of 1813 sq.ft. which was occupied by the Plaintiffs. A total of eight structures are in occupation of the Plaintiffs and their sub-tenants and it has been stated that the Municipal Corporation has not disturbed the occupation of the

Plaintiffs and their sub-tenants pending the final disposal of the proceedings initiated under Section 105B of the Act.

7. In support of the case which has been set up by the Municipal Corporation, a compilation of documents has been relied upon. The compilation of documents inter alia contains a letter dated 28th July 1974 addressed by the Executive Engineer to the Architect of the erst-while owner, S.N. Desai. The letter has been addressed in response to a proposal dated 28th March 2004 and records that the Municipal Corporation shall take over the land as described therein subject to the grant of FSI benefits to the owner. Accordingly, a possession receipt was executed on 1st March 1975 between the erstwhile owner and the Municipal Corporation.

8. During the hearing of these proceedings, the Municipal Corporation had placed on the record a fresh proposal for the allotment of alternate accommodation admeasuring 3626 sq.ft. to the Plaintiffs. The Municipal Corporation agreed to allot the aforesaid area subject to the payment of 25% of the construction cost and

stallage charges inclusive of property charges, water charges, electricity charges and maintenance charges. The Municipal Corporation stated that in accordance with the applicable rules and regulations, the space which is proposed to be allotted would be transferable subject to the payment of 7 years' stallage charges and transfer fees. The alternate premises were in a Municipal Market on CTS 111-B in Mahavir Nagar, Kandivali (West), Mumbai. The Plaintiffs are not agreeable to accept the alternate accommodation as proposed.

9. At this stage, it must be noted that the case of the Municipal Corporation is that it has acquired title to the land which forms the subject matter of the dispute, upon the erstwhile owner, S.N. Desai, surrendering possession against the grant of FSI benefits in 1975. The Plaintiffs claim that under a consent decree passed in a suit instituted by S.N. Desai against their predecessor-in-interest the tenancy of the Plaintiffs in respect of the land was accepted. The record before the Court would show that the case of the Plaintiffs was to the effect that their predecessor-in-interest had constructed a

structure thereon comprising of a stable and rooms which were used for commercial and residential purposes. When a part of the land was affected by road widening, the existing structure was removed pursuant to permission granted by the Municipal Corporation on 28th September 2000. Under the permission, the Plaintiffs were granted sanction to construct a structure consisting of a ground and mezzanine floor admeasuring 3626 sq.ft. using construction material of a specified description. The permission was subsequently revoked on the ground that the conditions governing the permission were breached. Initially, the Municipal Corporation appears to have decided to rehabilitate the Plaintiffs in the Building which was to be constructed but a policy decision was taken that the newly constructed building would be utilized only for a Municipal Office and the Plaintiffs would be accommodated elsewhere. The proposal made by the Municipal Corporation in the earlier proceedings before this Court and a fresh proposal for allotment of alternate accommodation in these proceedings has not been acceptable to the Plaintiffs. The Municipal Corporation has commenced proceedings for eviction under Section 105B. The order of eviction passed by the

Enquiry Officer has been challenged in appeal before the Principal Judge of the City Civil Court. That proceeding is pending. At the present stage, a statement has been made on behalf of the Municipal Corporation that pending the disposal of the appeal, the Municipal Corporation would not disturb the area admeasuring 1813 sq.ft. which is in occupation of the Plaintiffs and their tenants, and the work of construction will be carried out so as not to affect the structure.

10. The Plaintiffs do not claim ownership of the land. The land, even according to the Plaintiffs, belongs to S.N. Desai. The Municipal Corporation has claimed title on the basis of a voluntary surrender of the land by the erstwhile owner against the grant of FSI benefits. The erstwhile owner has no complaint nor does he challenge the title of the Corporation. The Plaintiffs seek a negative declaration in the suit that the Municipal Corporation has not acquired title to the land. At this stage, prima facie, the material produced on the record, shows that the erstwhile owner surrendered the land to the Municipal Corporation against the grant of FSI benefits and a possession receipt was executed by which possession was handed over to the

Municipal Corporation. The predecessor-in-interest of the Plaintiffs had knowledge of the claim to title of the Municipal Corporation, and paid ground rent to the Municipal Corporation. A reference to this is to be found in the previous order of the Court dated 11th April 2005 as well as in the averments contained in paragraph 4 of the suit instituted by the Plaintiffs. When the land came under road widening, the Plaintiffs agreed to relocate the structure to a portion of the land. Prima facie there is no merit in the challenge to the title of the Corporation. The Plaintiffs are estopped from challenging the title of the Corporation, to whom their predecessor had, even according to the Plaintiffs, paid rent.

11. The Municipal Corporation cannot be injuncted from proceeding ahead with the construction of a Municipal Office Building in accordance with the reservation contained in the sanctioned Development Plan. Injunctive relief, therefore, cannot be granted as sought in the Notice of Motion. However, it would be necessary to record the statement which has been made on behalf of the Municipal Corporation that pending the disposal of the appeal filed by the

Plaintiffs against the order passed in the proceedings under Section 105 B of the Mumbai Municipal Corporation Act, 1888, the structure admeasuring 1813 sq.ft. which is in the occupation of the Plaintiffs or their tenants shall not be disturbed, nor shall their possession to the aforesaid extent be disturbed. Should the Plaintiffs be aggrieved by the final order that may be passed in the pending appeal, they will be at liberty to take recourse to their remedies in law. Subject to the aforesaid assurance of the Municipal Corporation, which is accepted, the Plaintiffs would not be entitled to any other relief in the Notice of Motion which shall accordingly stand disposed of.

.....